

Laws Are Similar From State To State, But Not Identical Know Yours  
Better Than Your Tenants Do  
By Sharon Bass

\*Note:

- Nearly all evictions are prompted by nonpayment of rent. (Other reasons include breach of lease, criminal convictions, and habitually disturbing neighbors.) And nearly all involve residential tenants.
- Neither a property manager nor a landlord is legally allowed to evict a tenant, referred to as a "self eviction;" only a court can.
- Only a sheriff or other authority figure may physically carry out an eviction.
- A tenant who files a complaint with a governmental agency about a code violation in his building cannot be retaliated against by being served an eviction.
- When a tenant is more than three days late in paying rent, eviction proceedings may begin.

While these laws and procedures are in place in virtually all states, not all eviction laws are created equal. Neither is the way they're carried out by each state's judicial system. Some states are landlord-friendly; others show more empathy for the tenant.

#### DROOLING IN SEATTLE

Possibly no state is better buddies with its property managers and landlords than Texas.

"I sometimes wonder why I don't move to Texas, says property manager Ray Scarbosio, owner of Jackson Group Property Management in San Francisco. In his city, which practices rent-control, evictions can take more than two months, he says. And even when a court has evicted a tenant, the law allows the tenant to get a stay of the eviction, further dragging the process out while no rent is being paid. (You must have just-cause to evict in rent control cities.)

According to Texas property manager William Ferguson, a stay of eviction would never happen in his neck of the woods.

"People in Seattle and California, they drool at the Texas laws. They think we Texans walk into homes with a tall hat and two six-shooters on each side," quips Ferguson, who is vice president of Century 21 Judge Fite Management Company, in Duncanville. He manages 517 single-family homes.

While Texas property managers don't carry guns into the homes of tenants who are delinquent in rent, they don't have to wait 2+ months to get them removed. Usually, says Ferguson, the whole procedure takes 20 days-from the first day the rent is late to the day the tenant and his belongings are out on the street.

#### HOUSECLEANING, TEXAS-STYLE

"Today is the 11th (of January) and I'm filing 18 evictions," says

Ferguson. "Here in Texas, we clean house." In his 18 years in the business, he's initiated about 1,500 evictions, and only once did a tenant contest it. In comparison, Scarbosio says he's only sought 15 evictions in his two decades as a property manager.

Texas state laws are very firm, notes Ferguson. "They basically say if you're not going to pay, you're not going to stay." He says his evictions go smoothly and quickly because he follows the Texas Real Estate Commission's lease guidelines and refers to state property codes to make sure he's following the letter of the law. Both these bodies lean heavily in the landlord's favor.

While Texas is inarguably a landlord-friendly state where judges rule swiftly and nearly always in the landlord's or property manager's favor, the actual eviction procedure there doesn't vary much from other states.

The usual process across the country is as follows: once rent is three days late, a three-day notice to either pay or vacate may be sent to the tenant. If the tenant does neither within a week, eviction papers can be filed in court for generally under \$100. A court date is then set. If the eviction is granted-which it is most of the time, regardless of which state it's in-papers are sent to the county sheriff or other proper authority who carries out the physical eviction. On the court-set date of eviction, the sheriff will arrive at the evicted tenant's premises with a locksmith and crew, in case belongings have been left behind and need to be moved out.

The cost of an eviction varies depending on whether a lawyer is used and if it is contested. The tab can run into the thousands, not including unpaid rent and the cost of repairing damaged units by angry tenants.

There are also eviction services, like Eviction Assistance in San Francisco, which typically charge a fraction of what a private attorney does. Jo Biel, a paralegal for Eviction Assistance, says her agency charges \$450 for an uncontested eviction; \$900 for a contested one. She says lawyers charge by the hour, with an average fee of \$5,000.

"We make our money through volume," says Biel. "Property managers have enough to do."

Still, many property managers do the legwork themselves, so it's very important to know the eviction laws that govern your community-the state and local ordinances-and know them better than your tenants do.

#### JUMPING HOOPS IN WASHINGTON

Eviction proceedings are straightforward enough. Even so, in some states it's not so easy to get rid of deadbeat tenants.

"If the landlord makes any mistakes at all-including a bad middle initial-you have to start all over again," says Harry Obedin, president of Samaras Associates in Lynwood, Wash. He manages commercial and residential properties. Nearly all his evictions are of his residential tenants.

Washington state seems to be as tenant-friendly as Texas is landlord-friendly. Notes Obedin: "Judges perceive landlords as wealthy and mean, and tenants as poor and honorable."

While the steps of eviction in Washington pattern those in other states, the process is often dragged out and a simple technicality can prolong it for months, he says.

Even if a property manager follows the law with painstaking precision, Obedin says there is no guarantee you can get a deadbeat tenant out in less than two or three months. Sometimes it can take six, and don't try to evict in December. "The sheriff doesn't like to evict anybody the month of Christmas. It gives them a bad reputation," he says. "Some tenants know how to play the law like a violin."

#### ROLLING OUT THE U-HAULTM

Is there an alternative to costly and time-consuming evictions?

Yes, says attorney Thanasi Preovolos, of the San Diego law firm Preovolos & Associates. In fact, Preovolos, who has handled numerous evictions, has a pretty interesting option: pay the tenant to leave.

"The average landlord or property manager comes in and the first advice I give is this: rent them a U-HaultM on your own tab, and even pay the first month's rent and security deposit on a new place," he says.

#### HE'S NOT JOSHING

"You've got to preserve your property and the only way to make money is to have paying tenants," says Preovolos.

Many of his clients actually follow this advice once the math is presented to them. "Twenty-five dollars for a U-HaultM is peanuts," he says. "Even the first month's rent and security can be less than no rent for three months while you're fighting an eviction." He says the "really good tenants" can stretch the eviction fight out for months longer. Then there are the court and other legal costs.

Not only can paying a tenant to move be cheaper than getting embroiled in a contested eviction, but Preovolos says it can reduce the likelihood the tenant will trash his place, because you've shown some kindness.

"You're being empathetic to achieve a capitalistic result," he says. "And forget about trying to sue them," he says. "These tenants have no assets. You can get a great judgment in your favor, but so what? What are you going to do with it? Hang it on the wall?"

#### DROPPING IT AND MOVING ON

Julie Gilstrap is one property manager who can attest to that. "I don't take evicted tenants to court because often you can't find them and they have nothing (no money)," laments Gilstrap, a property manager with Sun Coast Real estate, on Anna Maria Island, Fla.

She's had her fill of evicted tenants who destroy the property before they make their final exit, but there was one she'll never forget. This tenant, who was successfully evicted, left behind a couple of large dogs. No one checked the apartment for several days. When Gilstrap went in, she said "there were droppings everywhere-even on the walls."

"My remedy for reducing evictions is to be thorough on the investigation of the tenant prior to move-in. It really helps," she says. "I also manage mostly high-end properties, so I don't get the riffraff."

Attorney Prevolos suggests being nice to tenants who are delinquent in paying their rent. "Be careful with the first contact you make when the rent is late. Disarm the tenant by being nice. Ask him if something's wrong.

"It takes about 30 seconds to ask someone what's wrong and amazing things can happen. I've actually seen tenants who were given money for a U-Haul™ and security deposit repay the landlord a year later. You're breeding honesty."

Not bad advice, especially if you're not managing property in Texas.

Sharon Bass is a free-lance writer living in Portland, Maine.

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